

ESTTA Tracking number: **ESTTA528527**

Filing date: **03/25/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	Forest Laboratories, Inc.
Granted to Date of previous extension	03/24/2013
Address	909 Third Avenue New York, NY 10022 UNITED STATES
Attorney information	Christopher Serbagi The Serbagi Law Firm, P.C. 488 Madison AvenueSte 1120 New York, NY 10022 UNITED STATES ptoemails@earthlink.net, madis48@earthlink.net, david@serbagilaw.com

### Applicant Information

Application No	85606899	Publication date	09/25/2012
Opposition Filing Date	03/25/2013	Opposition Period Ends	03/24/2013
Applicant	APOTHECARY HOLDINGS, INC. 1606 W. Whispering Wind Drive Phoenix, AZ 85085 UNITED STATES		

### Goods/Services Affected by Opposition

Class 005. All goods and services in the class are opposed, namely: Drug delivery agents consisting of compounds that facilitate delivery of a wide range of pharmaceuticals; Pharmaceutical preparations and substances for the treatment of infectious diseases, blood disorders, pain, inflammation, sepsis, alopecia, obesity and cognitive disorders; Pharmaceutical preparations and substances for the treatment of viral, metabolic, endocrine, musculoskeletal, cardiovascular, cardiopulmonary, genitourinary, sexual dysfunction, oncological, hepatological, ophthalmic, respiratory, neurological, gastrointestinal, hormonal, dermatological, psychiatric and immune system related diseases and disorders; Pharmaceutical preparations for the treatment of eye diseases and conditions
Class 035. All goods and services in the class are opposed, namely: Mail order pharmacy services; Pharmaceutical services, namely, processing online and telephone prescription orders in retail and central fill pharmacies; Retail pharmacy services; Retail veterinary pharmacy services
Class 044. All goods and services in the class are opposed, namely: Medical and pharmaceutical consultation; Pharmacists' services to make up prescriptions

## Applicant Information

Application No	85618429	Publication date	09/25/2012
Opposition Filing Date	03/25/2013	Opposition Period Ends	
Applicant	APOTHECARY HOLDINGS, INC. 1606 W. Whispering Wind Drive Phoenix, AZ 85085 UNITED STATES		


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<p>Class 035. All goods and services in the class are opposed, namely: Mail order pharmacy services; Pharmaceutical services, namely, processing online and telephone prescription orders in retail and central fill pharmacies; Retail pharmacy services; Retail veterinary pharmacy services</p>
<p>Class 044. All goods and services in the class are opposed, namely: Medical and pharmaceutical consultation; Pharmacists' services to make up prescriptions</p>


## Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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## Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3658661	Application Date	06/21/2007
Registration Date	07/21/2009	Foreign Priority Date	NONE
Word Mark	SAVELLA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2009/04/24 First Use In Commerce: 2009/04/24		

	pharmaceutical preparations for the treatment of fibromyalgia and neuropathic pain disorders
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U.S. Registration No.	3761078	Application Date	08/03/2009
Registration Date	03/16/2010	Foreign Priority Date	NONE
Word Mark	SAVELLA		
Design Mark			
Description of Mark	The mark consists of "SAVELLA" followed by two curved lines on top of three curved lines.		
Goods/Services	<p>Class 016. First use: First Use: 2009/05/17 First Use In Commerce: 2009/05/17 printed matter, namely, brochures, pamphlets, posters, newsletters, promotional materials, patient educational materials, all concerning the treatment of fibromyalgia and neuropathic pain disorders</p> <p>Class 044. First use: First Use: 2009/01/15 First Use In Commerce: 2009/01/15 medical informational services, namely, providing health information in the field of fibromyalgia and neuropathic pain disorders via a global computer network</p>		

Attachments	77211766#TMSN.jpeg ( 1 page )( bytes ) 77795756#TMSN.jpeg ( 1 page )( bytes ) AVELLA Notice of Opposition.pdf ( 4 pages )(85798 bytes )
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### Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by Overnight Courier on this date.

Signature	/christopher serbagi/
Name	Christopher Serbagi
Date	03/25/2013

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Application Serial No. 85,606,899  
Mark: AVELLA, INC. and Serial No. 85/618,429  
Mark: AVELLA HEALTH VIA EXCELLENCE

FOREST LABORATORIES, INC.,	)	
	)	
Opposer,	)	OPPOSITION NO.:
	)	
v.	)	
	)	
	)	
APOTHECARY HOLDINGS, INC.	)	
	)	
	)	
Applicant.	)	

**NOTICE OF OPPOSITION**

Opposer, Forest Laboratories, Inc., a Delaware corporation located and doing business at 909 Third Avenue, New York, New York 10022, believes that it will be damaged by registration of the mark shown in Serial Nos. 85/606,899 and 85/618,429, which were published in the *Official Gazette* on September 25, 2012, and hereby opposes the same.

As grounds for the opposition, Opposer alleges that:

1. On or about May 7, 2012, Applicant filed intent-to-use Applications for the marks AVELLA, INC. (Serial No. 85/606,899) and AVELLA HEALTH VIA EXCELLENCE (Serial No. 85/618,429), both, respectively, for “Drug delivery agents consisting of compounds that facilitate delivery of a wide range of pharmaceuticals; pharmaceutical preparations and substances for the treatment of infectious diseases, blood disorders, pain, inflammation, sepsis, alopecia, obesity and cognitive disorders; pharmaceutical preparations and

substances for the treatment of viral, metabolic, endocrine, musculoskeletal, cardiovascular, cardiopulmonary, genitourinary, sexual dysfunction, oncological, hepatological, ophthalmic, respiratory, neurological, gastrointestinal, hormonal, dermatological, psychiatric and immune system related diseases and disorders; pharmaceutical preparations for the treatment of eye diseases and conditions,” in Class 5, for “Mail order pharmacy services; pharmaceutical services, namely, processing online and telephone prescription orders in retail and central fill pharmacies; retail pharmacy services; Retail veterinary pharmacy services,” in class 35, and for “Medical and pharmaceutical consultation; pharmacists' services to make up prescriptions,” in Class 35 (the “Proposed Marks”).

2. Opposer will be damaged by the registration of the Proposed Marks.

3. Opposer is the owner of the following United States registrations:

SAVELLA, Reg. No. 3,658,661, filed on June 21, 2007 and registered on July 21, 2009 for “Pharmaceutical preparations for the treatment of fibromyalgia and neuropathic pain disorders” in Class 5 and SAVELLA and Design, Reg. No. 3,761,078, filed on August 3, 2009 and registered on March 16, 2010 for “Printed matter, namely brochures, pamphlets, posters, newsletters, promotional materials, and patient educational materials, all concerning the treatment of fibromyalgia and neuropathic pain disorders” in Class 16 and “Medical information services, namely, providing health information in the field of fibromyalgia and neuropathic pain disorders via a global computer network” in Class 44 (collectively, the “SAVELLA Marks”).

These registrations are valid, subsisting, and in full force and effect, and constitute evidence of the validity of the SAVELLA Marks and of Opposer’s exclusive right to use them on the goods and services identified in the registrations.

4. The SAVELLA Marks are in use in connection with an FDA-approved prescription pharmaceutical, and have been the subject of significant marketing efforts.

5. The SAVELLA Marks and the Proposed Marks are very similar in “sight, sound, and meaning.” The goods and services described in Applicant’s application are closely related to products and services offered by Opposer under the SAVELLA Marks such that consumer confusion is likely to result.

6. Opposer’s SAVELLA Marks have priority because Opposer filed its applications for those marks on (June 21, 2007 and August 3, 2009) before any priority date that Applicant can claim relating to the Proposed Mark

7. WHEREFORE, Opposer requests that the Board sustain this Opposition and refuse registration of the proposed Marks AVELLA, INC. (Serial No. 85/606,899) and AVELLA HEALTH VIA EXCELLENCE (Serial No. 85/618,429).

THE SERBAGI LAW FIRM, P.C.  
*Attorney for Forest Laboratories, Inc.*

Dated: March 25, 2013  
New York, New York

/Christopher Serbagi/  
Christopher Serbagi  
488 Madison Avenue, Suite 1120  
New York, New York 10022  
Tele: (212) 593-2112  
Fax: (212) 308-8582

**CERTIFICATE OF SERVICE**

I certify that on March 25, 2013, I served a copy of the attached Notice of Opposition by causing a true copy thereof to be delivered by electronic communication and Federal Express to Applicant's attorney in an envelope addressed as follows:

Sean D. Johnson, Esq.  
Ingrassia, Fisher & Lorenz PC  
7010 E. Cochise Rd.  
Scottsdale, Arizona 85253-1406

And to Applicant as follows:

Apothecary Holdings, Inc.  
1606 W. Whispering Wind Dr.  
Phoenix, Arizona 85085-1322

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/Christopher Serbagi/  
Christopher Serbagi